

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS - CRIMINAL TERM - PART 39

-----X
THE PEOPLE OF THE STATE OF NEW YORK, :

-against- :

JABBAR COLLINS, :

DEFENDANT. :

-----X

Indict. No. 2884/94
SENTENCE

360 Adams Street
Brooklyn, New York

April 3, 1995

B E F O R E:

HONORABLE FRANCIS X. EGITTO,
Justice.

A P P E A R A N C E S:

OFFICE OF CHARLES HYNES, ESQ.
DISTRICT ATTORNEY - KINGS COUNTY

Attorney for the People
BY: MICHAEL VECCHIONE, ESQ.

CHARLES POSNER, ESQ.

-and-

STACEY FRASCOGNA, ESQ.
Assistant District Attorneys

MICHAEL HARRISON, ESQ.,
Attorney for the Defendant
401 Broadway
New York, New York

DONNA MANNING, RPR
OFFICIAL COURT REPORTER

1 Proceedings

2 THE COURT CLERK: This is on the sentence
3 calendar, it is number 2, indictment 2884 of 1994,
4 Jabbar Collins, and on the violation of probation
5 calendar, number 3, Superior Court information
6 8907 of '90, Jabbar Collins.

7 Counsel, your appearances for the record.

8 MR. HARRISON: Michael Harrison, 401
9 Broadway, for the defendant, Mr. Collins.

10 MR. POSNER: Charles A. Posner, Assistant
11 District Attorney.

12 MR. VECCHIONE: Michael Vecchione, Stacey
13 Frascogna, Office of the District Attorney.

14 THE COURT: Ms. Cline, you had an application
15 before the Court. This is Anna Cline, who is the
16 pool representative.

17 MS. CLINE: Yes, I do, your Honor.

18 THE COURT: Is that what your title is?

19 MS. CLINE: I am administrator for the
20 Broadcasters Pool of New York.

21 I have an application this morning for
22 Channel 2 to videotape the sentencing of the
23 defendant.

24 At this point I won't make any remarks except
25 to say, obviously, the prejudicial effect here is

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2 nothing since there has been a trial and a
3 conviction, and I will reserve any comments to
4 answer objections that may come up.

5 MR. HARRISON: If I may, the defense, of
6 course, respectfully objects.

7 THE COURT: All right.

8 MR. POSNER: We take no position.

9 THE COURT: This being an important case, in
10 my opinion, for the purpose of the videotaping I
11 will grant the application, and you will file the
12 order with the Administrative Judge.

13 MS. CLINE: Yes. If I could have two
14 minutes.

15 MR. HARRISON: Your Honor, if I may.

16 THE COURT: Yes, sir.

17 MR. HARRISON: My client respectfully
18 requests the right to turn in a pro se 330.30
19 motion based on ineffective assistance of counsel,
20 and so, therefore, I ask the Court's indulgence
21 and permission to file these motions.

22 I give one to the D.A. with affidavits.
23 Here's one for the Court.

24 THE COURT: Have a seat. Since it has been
25 served now, have a seat, Mr. Harrison.

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MR. HARRISON: Your Honor, I seem to have a whole bunch, a whole mess of other affidavits here.

(Defendant and counsel conferred.)

THE COURT: Mr. Vecchione.

MR. VECCHIONE: Yes, your Honor.

THE COURT: I know you and Mr. Posner, since you have just received it, would you like to read it and tell me if you wish to respond in writing or whether you can respond orally and I will --

MR. VECCHIONE: Yes, your Honor. Judge, your Honor, may I just ask the Court's indulgence for a moment. Do you have a copy of the CPL?

THE COURT: Sure.

MR. POSNER: That is what we need.

THE COURT: First of all, Mr. Harrison, these should have been filed with the Clerk's office and come down with a buck sheet.

MR. HARRISON: Your Honor, I understand. At this juncture --

THE COURT: I understand. That is why I am taking it.

MR. HARRISON: Excuse me?

THE COURT: That is why I am taking them

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because --

MR. HARRISON: Yes, your Honor.

THE COURT: Do you want to be heard on it, Mr. Harrison, or have you read them?

MR. HARRISON: Your Honor, I have gleaned them.

Your Honor, at this juncture, with the issue being raised, obviously, is, in essence, ineffective assistance of counsel, which I would say, in essence, is as if premising that it was my fault that he was convicted therefor, I do not feel that way but do not necessarily have a position.

THE COURT: Before I rule on that, have you any -- you reserve motions for the time of sentence?

MR. HARRISON: Yes, that's correct.

THE COURT: Have a seat, Mr. Posner.

THE DEFENDANT: May I speak?

THE COURT: You are going to get a chance to speak.

You reserve your motions at this point?

MR. HARRISON: Yes, I do.

THE COURT: Okay. And I will hear you on the

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motions. Then if Mr. Collins wants to talk on his motion before me, then I will hear him.

Go ahead.

MR. HARRISON: Naturally, the defense, pursuant to the law, would move to have the verdict set aside from the defense position inasmuch as the People have failed to meet their burden of proof beyond a reasonable doubt based on the evidence before the Court, based on the differences of the various identifications, based on the different descriptions, based on the lineup where there was no positive hit, and all the record before the Court, the defense respectfully requests that the verdict be set aside.

THE COURT: Do you want to be heard?

MR. VECCHIONE: Yes, your Honor, just very briefly.

THE COURT: On that motion?

MR. VECCHIONE: Yes.

Your Honor sat through this entire trial, heard all of the evidence in the case and, most respectfully, I ask the Court to deny counsel's motions that the evidence in this case, it is not even weak, it is not even strong, it is

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2 overwhelming and was overwhelming, and the jury's
3 verdict, within a very short period of time --
4 given the fact, your Honor, we had some readbacks
5 and an examination of some of the evidence and a
6 lunch hour in between -- the shortness of the
7 jury's deliberation and the shortness of the
8 verdict, I think, bears out the fact that this
9 evidence was, in fact, overwhelming, and I would
10 ask the Court to, most respectfully --

11 THE COURT: In effect, aren't you,
12 Mr. Harrison -- and I am asking both of you --
13 asking me to make an evaluation of the factual
14 pattern in this case?

15 MR. HARRISON: Your Honor, the defense simply
16 puts forth the proposition that the People have
17 not met their burden within the meaning of 330.30
18 of the Criminal Procedure Law.

19 THE COURT: Okay. That I understand.

20 MR. HARRISON: Therefore, by requesting a
21 ruling --

22 THE COURT: From what you are pointing out,
23 you are requesting me to make a judgment in place
24 of the jury; I thought that was in his original
25 affidavit.

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2 MR. VECCHIONE: Against the weight of the
3 evidence; that is what I thought.

4 MR. HARRISON: For the verdict to be set
5 aside.

6 THE COURT: All right. That is denied.

7 MR. HARRISON: Exception for the record.

8 THE COURT: On the motion to find that
9 Mr. Harrison was an inefficient lawyer, do you
10 want to talk about it?

11 THE DEFENDANT: Yes, your Honor.

12 MR. VECCHIONE: Just before Mr. Collins
13 begins, I would be prepared to argue this now. I
14 don't need time to respond.

15 THE COURT: Go ahead.

16 THE DEFENDANT: Your Honor, I submitted a
17 330.30 motion as to ineffective assistance of
18 counsel.

19 THE COURT: I know.

20 THE DEFENDANT: Meaning that Mr. Harrison was
21 aware of several alibi witnesses who were willing
22 to testify at my trial but not allowed to because
23 of Mr. Harrison. Therefore, you have signed
24 affidavits of several witnesses saying that they
25 were willing to testify and they were not allowed

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to testify because of Mr. Harrison.

Also, I ask that the verdict be set aside on the grounds that my Sixth Amendment right to counsel was violated during lineups. The lineups were not suppressed. They were held in violation of my Sixth Amendment right of counsel.

Also, the Court failed to hold an independent hearing to determine if an independent source existed for in-court identifications made by two prosecution witnesses, and also because the People failed to prove the case beyond a reasonable doubt.

My memorandum of law was submitted to you and the signed affidavits --

THE COURT: Right.

THE DEFENDANT: -- are there also.

THE COURT: If I recall correctly, you did not testify.

THE DEFENDANT: Yes, I did, sir.

THE COURT: You did testify?

MR. VECCHIONE: Yes, he did, sir.

THE DEFENDANT: I did take the stand.

THE COURT: Oh, I am sorry. One moment. I have had so many cases lately.

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2 I am sorry, you are right. It was on March
3 13. Oh, I recall, I think.

4 MR. VECCHIONE: This is just before
5 summation, Judge, you remember.

6 THE COURT: I think that was on a Friday. We
7 summed and charged this case on a Monday, and on
8 Friday I went into a very long discussion with you
9 on whether you wanted to testify or call
10 witnesses, isn't that right?

11 THE DEFENDANT: Not a very long discussion,
12 sir. You asked me if I wanted to take the stand
13 at the time.

14 THE COURT: I asked you if you wanted to take
15 the stand or to call witnesses, isn't that right?

16 THE DEFENDANT: No, sir, I don't believe it
17 is. I believe you asked me if I want to take the
18 stand.

19 THE COURT: The record will speak for itself.

20 THE DEFENDANT: Exactly.

21 THE COURT: I believe I told you you have an
22 absolute right to put in a defense, to testify and
23 to call witnesses. You said you were abiding by
24 Mr. Harrison's motion that he made to me that the
25 People rest and that we went over Friday and I was

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going to have summations and charge first thing Monday morning and on Monday morning you came in and said you were willing to testify.

THE DEFENDANT: Yes, sir.

THE COURT: And I allowed you to testify, correct? And you didn't ask me about calling any witnesses?

THE DEFENDANT: It was understood --

THE COURT: No. Follow me.

THE DEFENDANT: All right.

THE COURT: You did not ask me for the right to call witnesses, did you?

THE DEFENDANT: No, not at that time I didn't, Judge.

THE COURT: All right.

THE DEFENDANT: May I comment?

THE COURT: I heard you. I want to hear what the D.A. will say. I heard you on your motion. You can be seated.

Mr. Posner and Mr. Vecchione.

MR. VECCHIONE: Your Honor, I have perused the papers and, frankly, the motion is nothing more than boilerplate probably gotten from a jailhouse lawyer over wherever Mr. Collins is

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2 presently residing. It lays out the classic
3 Strickland v. Washington argument which attacks
4 trial strategy by a defense attorney as opposed to
5 ineffective assistance of counsel.

6 I recall during the course of this trial that
7 before Mr. Harrison would even so much as ask for
8 a lunch break or ask the Court for a break of any
9 kind, that he would consult with his attorney --
10 his client so that he would make it absolutely
11 certain for the record that it was his client's
12 decision to do each and every thing that occurred
13 during the course of this trial to the extent,
14 quite frankly, Judge, it was exasperating to me
15 because I felt Mr. Harrison was a competent
16 lawyer, someone who has been practicing before
17 these courts for many years.

18 THE COURT: And very successfully, I might
19 say.

20 MR. VECCHIONE: And successfully. He has
21 tried cases against me in the past. I know he is
22 a very careful attorney. Before he did anything,
23 he consulted with his client. If he were to ask
24 questions and get the consultation of his -- I am
25 sorry -- if he were to seek consultation from his

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client before asking for mundane things during the course of the trial, if there is anything mundane in a murder trial, I can't imagine that he took it upon himself to make the decision to not call alibi witnesses and to initially not call the defendant to the stand.

However, your Honor was willing and gracious enough to allow Mr. Harrison and Mr. Collins to reopen their case on a Monday morning, before we were all ready to sum up, so that Mr. Collins could testify and if he had witnesses, they could be called. He had witnesses sitting in the audience on the Friday that he rested. He had witnesses sitting in the audience on the day that he asked the Court to reopen his case so that he could testify.

As a matter of fact, part of my cross-examination was to ask him where several of those witnesses were that he claimed were with him on the day of this homicide at the time it had occurred and he pointed them out in the audience.

THE COURT: They had the woman in the audience.

MR. VECCHIONE: That's correct. His mother,

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who gives an affidavit, is here again today. She gives an affidavit saying he was with her. She was here during the course of this entire trial. I don't recall anybody ever stopping the defense from calling her to the stand.

Clearly, your Honor, this was strategy on the part of the defendant and his attorney after consultation with each other and with the defendant's family. Mr. Harrison I saw in consultation with Mrs. Collins many, many times during the course of this trial, including conversations that she had with him and an investigator. So this is just another attempt at the 11th hour to thwart what is, it seems to me, an absolutely overwhelming case of guilt against this defendant.

I might also point out, your Honor, that I have in front of me seven -- I am sorry -- six affidavits --

THE COURT: Go ahead.

MR. VECCHIONE: -- that claim to be alibi affidavits of witnesses who say that Mr. Collins was with him at a particular time. At no time other than Mrs. Collins and Luisa Lopez, whose

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2 affidavits are in here, did we get notice of alibi
3 from any of these witnesses.

4 THE COURT: And Mr. Collins did not mention
5 six people when he was on the stand.

6 MR. VECCHIONE: He mentioned several people,
7 his brother being one of them, his mother being
8 another --

9 THE COURT: Yes.

10 MR. VECCHIONE: -- Ms. Lopez being another,
11 all of whom were here during the course of this
12 trial, if not on that particular day. Absolutely
13 no one stopped him from doing anything in this
14 case.

15 As matter of fact, I was quite perturbed that
16 your Honor allowed him to reopen this case at the
17 time. We had all settled in. I didn't have a
18 file with me that day. I was prepared to sum up
19 and to do nothing else because you had made a full
20 and complete record on Friday as to whether or not
21 the defense was going to rest, and he made a
22 decision to rest.

23 Clearly, your Honor, this is the kind of
24 thing that smacks of desperation as to
25 Mr. Collins' testimony on the day that he

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1 testified slapped of, and I would ask the Court to
2 dismiss and to not even entertain any longer this
3 last-ditch effort on the part of Mr. Collins to
4 set aside this verdict on grounds that are clearly
5 bogus.

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7 Judge, it is very difficult for a prosecutor
8 to speak on behalf of a defense attorney but in
9 this case I feel I am compelled to do so. Just
10 one last thing. Mr. Harrison is very careful and
11 has been very careful throughout this entire
12 trial. If strategy-wise they have come up with a
13 decision that has resulted in a conviction because
14 the evidence was overwhelming, then so be it. The
15 Courts don't speak to that. That is what this
16 clearly is.

17 I would ask the Court at this point to
18 dismiss the 330.30 motion and to sentence the
19 defendant today.

20 THE COURT: As a matter of fact, talking
21 about Mr. Harrison's carefulness, I think that
22 that started even with jury selection, if I
23 remember correctly.

24 MR. VECCHIONE: Yes, it did, Judge.

25 THE COURT: He did not even pick a juror

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without first consulting with the defendant.

MR. VECCHIONE: That's correct, and it continued until this morning when your Honor asked us about the motion to allow the cameras in the courtroom. Mr. Harrison indicated that he had a position but he would not articulate that position until he spoke to his client and that his client's position would be the one that he put forward on the record.

So his carefulness about decision-making in this case continues up to the moment, Judge.

THE COURT: Just give me one more minute.

(Pause)

THE COURT: The motion in all respects is denied. And, as a matter of fact, even the last-ditch effort by the defendant to, when Mr. Harrison advised the defendant that it would be in his best interest not to testify, which I fully agreed, the defendant expressed his desire to testify and Mr. Harrison acceded to that request, as he did for every request the defendant made during the course of the trial.

The motion is denied. You have an exception, Mr. Collins, and this record will become part of

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2 the record on appeal. And, Mr. Harrison, I am
3 directing you, after I impose sentence, to file a
4 notice of appeal.

5 MR. HARRISON: I will.

6 THE COURT: And if the defendant continues to
7 be indigent, to request assignment of counsel in
8 the Appellate Division. I may not recall it at
9 the time after I impose sentence but I am
10 directing to you to do that, and this record will
11 be -- this motion will be part of the court
12 record. I will have it filed upstairs, entered
13 into the court records, and this way it will be
14 part of the appeal if and when one is taken.

15 MR. HARRISON: Yes, your Honor.

16 THE COURT: John.

17 THE COURT CLERK: Is the defendant ready for
18 sentence?

19 THE DEFENDANT: Yes, I am.

20 THE COURT CLERK: Please stand. What is your
21 name?

22 THE DEFENDANT: Jabbar Collins.

23 THE COURT CLERK: Is Mr. Harrison who stands
24 beside you your attorney?

25 THE DEFENDANT: Yes.

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THE COURT CLERK: Before sentence is pronounced, you are advised that you, your attorney and the district attorneys have a right to make a statement.

Mr. Vecchione, did you wish to make a statement? Mr. Posner?

MR. POSNER: Yes.

I previously served notice on the Court, and I served a copy to Mr. Harrison, of the desire of the wife of the deceased, Mr. Pollack, to address the Court. Her name is Rivka Pollack and she would like to address the Court as to sentencing.

THE COURT: Rather briefly, I presume.

MR. POSNER: Yes. Ms. Pollack.

THE COURT: You gentlemen can be seated.

Yes, ma'am.

MRS. POLLACK: I have to begin by telling you that I am very proud person. My feelings really lie within me and my thoughts are not easily read, but I felt in this case that I had to get up and plead with you to act in a manner which will add a drop of comfort to our lives and maybe give a bit of rest to my husband's soul.

To backtrack just a moment, every young girl

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2 dreams of her wedding day. I not only dreamed of
3 it but I lived for the day when I get married. I
4 was orphaned of my parents and my grandparents
5 when I was a child, and I only looked forward
6 towards my wedding day when I would be able to
7 have my own home, and my husband and I would raise
8 our children in our home.

9 Our children were born in quick succession,
10 and I need not tell anyone present in the
11 courtroom how difficult it is to raise children,
12 to provide for the emotional, spiritual and
13 physical needs of one's children even when you
14 have the most devoted of two parents, but we felt
15 we were succeeding.

16 We were tested in our marriage when my
17 youngest was six months, my fourth child. My
18 husband underwent double valve replacement surgery
19 in the intensive care unit of Mount Sinai
20 Hospital. Setbacks set in. He had a stroke. He
21 had pneumonia. He had infections. Recovery was
22 slow but the outpouring of love and bearers was
23 strong. I didn't become a widow. My children
24 were not orphaned. They still had their beloved
25 father.

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2 Last February of '94 my youngest who is now
3 nine months old, my oldest was 12. Several weeks
4 ago I was asked whether I ever accompanied my
5 husband to the building to collect rent. I
6 answered no. I was asked why and Mr. Harrison
7 objected to that question, he didn't allow me to
8 answer, but the answer is, of course, that I had
9 nine children to care for, to feed, to clothe, to
10 send off to school, to greet them when they came
11 home. My husband worked six days a week. He
12 worked very long hours. We didn't have any
13 government handouts. After work anyone needing a
14 few dollars for a few days, the car for a few
15 hours, anyone needing a sympathetic ear could call
16 on us at my house.

17 The defendant sitting here in this courtroom
18 is not a destroyer of one life. He is a destroyer
19 of several lives. He destroyed the love of the
20 father of my children. He destroyed the love of
21 my dear husband. He destroyed a dear friend of
22 his best friends. He destroyed a much beloved
23 person to all those who knew and loved him. He
24 destroyed the youngest child of my mother-in-law.

25 My mother-in-law was 44 when she gave birth

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2 to my husband. She was, of course, overjoyed. My
3 mother-in-law and I are now widows together. My
4 mother-in-law lost her husband exactly three years
5 before she lost her youngest child.

6 I once thought that the death penalty was the
7 cruelest of punishment but I was never the victim
8 of a crime. I was innocent. Now I see that is
9 not so. I wish the defendant here, I wish my
10 husband's murderer a very, very long, long life in
11 jail. He forfeited his right to live as a normal,
12 functioning human being. He has no right to see
13 the sunshine. He has no right to walk in the
14 park, to hear children. He has no right to do
15 anything which normal or functioning human beings
16 does.

17 I want him to pay daily for what he has done
18 to our lives as we will grieve daily from what we
19 has done to our family. May no one ever
20 experience the sorrow and grief we who remain must
21 live with until the end of our lives.

22 Thank you.

23 THE COURT: Mr. Posner.

24 MR. POSNER: Thank you, your Honor.

25 What struck me about the preparation of this

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2 case was that all the witnesses who lived in this
3 building, 126 Graham, where Abraham Pollack was
4 attempting to collect some rents and manage his
5 building, all came forward and said the same
6 thing: This was a gentle caring man who cared
7 about them; they cared about him. One tenant had
8 rent. The other tenant needed money. He took the
9 rent from one, he handed it to the next person.
10 He paid all his merchants on the block in cash.
11 He paid all his bills promptly. He came there
12 regularly and cared for his building, so regularly
13 that it proved to be his downfall, because he came
14 every Sunday without fail to care for his
15 buildings. He is a simple man whose records were
16 kept by the cash in one pocket from one source and
17 the cash from the other source in the other
18 pocket.

19 He paid his bills in cash. Where his tenant
20 had a check and they needed it cashed and they
21 didn't have a paycheck cashing service, he paid it
22 for them. He would take his rent and give him
23 back his money. This was his downfall. Everyone
24 knew he carried cash and he came there regularly;
25 the first Sunday of every month he would be

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there.

And so this defendant, this person who stands convicted of his murder, got together to snort some drugs and to listen to and to plan the death of this man, to plan the murder of this man.

I think it is time to send a message to those who will stand in a stairwell and plot the death of good citizens with nine millimeter guns that are destroying our borough. I have stood here many times before in this court asking you to send a message to those who will take nine millimeters and end the right of people who have a right to live and do business in the borough where we all live.

I will not say anything more particularly about this person because you have admonished me in the past that all victims are important and all people's lives are valuable, all victims have a right to live, deserve to be alive, but we've got to say be something to the people who deal drugs, carry nine millimeters, load a nine millimeter, stand and wait for somebody trying to do some business and then brutally murder them, unnecessarily murder them.

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2 I am asking that -- I would like to ask the
3 following in regards to the sentence, and I am
4 going to ask you something that may possibly be
5 beyond what the Court has considered. But in view
6 of the facts of this case, I feel I am compelled
7 to ask for it.

8 This defendant was convicted both of
9 intentional murder and felony murder and robbery
10 one. He shot this man once in the stomach. He
11 was bleeding bright red. He was fighting with
12 this defendant when Mr. Paul Avery, who was also a
13 victim of the crime, just moments later came upon
14 the scene. The medical examiner testified that
15 any one of three wounds could have proved fatal,
16 including that initial stomach wound, to the
17 deceased, Mr. Pollack. He could have stopped at
18 that point, completed his robbery and then left,
19 and he might have survived to see his wife and his
20 nine children again. After fighting with
21 Mr. Avery, putting a bullet in Mr. Avery's leg,
22 falling to the ground, all three of them together,
23 having Abraham Pollack lying on the ground
24 incapacitated, Mr. Avery lying beside him, this
25 defendant then makes a separate decision and, I

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2 suggest, an independent decision, one which was an
3 unnecessary afterthought, to quote People v.
4 Tannerite, 30 N.Y. 2d 102 -- and I have a copy for
5 the Court and a copy for counsel -- as an
6 unnecessary afterthought, he puts five more
7 bullets, five more nine millimeter bullets into
8 the body of Abraham Pollack, thereby assuring and
9 insuring that he will die as well as be robbed
10 that day.

11 I am asking you to impose the maximum
12 sentence you can, 25 to life for the life, for the
13 intentional murder of Abraham Pollack. I am also
14 asking consecutively that you impose 12 and a half
15 to 25 for an armed violent felony offense for the
16 robbery in the first degree to run consecutive to
17 the intentional murder under the authority of
18 People v. Tannerite, and run the felony murder
19 which has to be concurrent to those two.

20 After he was finished finishing off
21 Mr. Pollack, he decided to finish off Mr. Avery.
22 It is no wonder that Mr. Avery could not identify
23 this defendant while others very clearly did, but
24 probably the one thing he would remember as the
25 muzzle flash as the shot to finish him off was

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fired into Mr. Avery's chest, Mr. Avery survived.

I am asking that you give the maximum for the attempted murder of Mr. Avery to run consecutive, to run consecutive to the time on the robbery and consecutive to the time on the intentional murder; that all three run consecutive. These are three separate, independent crimes.

I would also submit to the Court that the possession of the weapon, the criminal possession in the second degree, should also run consecutive to the other three crimes. He possessed it independently. He came to this crime possessing it. He stood in the hallway for some 20 minutes possessing it. He should not be allowed to have the free ride on that. It is an independent charge under the law. The jury clearly convicted him of it, and that should run consecutive as well.

This defendant has had a short brief drug-filled violent life. I know he has a Y.O. which also was a violent crime that he was sentenced for. It is time to take this person, to take him out of our borough, send a message to the rest of the people over at 126 Graham and those

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2 environments that those who come to do business
3 can do business and live their good lives free of
4 the violence that this man represents.

5 Thank you.

6 THE COURT CLERK: Mr. Harrison, do you wish
7 to make a statement?

8 MR. HARRISON: Yes, your Honor.

9 The defense would ask for the minimum
10 sentence under the law to run concurrent.

11 I would point out that my client's family is
12 in the audience and his family members have been
13 here the entire time, and I would ask for the
14 minimum sentence.

15 Thank you.

16 THE COURT CLERK: Mr. Collins, do you wish to
17 say anything on your own behalf with respect to
18 sentence?

19 THE DEFENDANT: Yes, I do.

20 THE COURT CLERK: Please stand and make your
21 statement.

22 THE DEFENDANT: From the first time the
23 police had contact with me, I never showed any
24 signs I was guilty and when the police first
25 wanted to contact me, I walked down to the

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precinct on my own and volunteered for the lineup. In the lineup I wasn't identified, and I went home and went about my life.

When they came back the second time, I went down to the precinct to see what they wanted. A guilty man does not volunteer himself down to the precinct for investigation. A guilty man does not walk into a precinct when the police want to come and arrest him for a murder.

Through this whole trial I have shown nothing, I have shown no signs of guilt, and I am not guilty. I never had anything to do with the death of Mr. Pollack. From what I hear, he was a good man, and I sympathize with his family for his loss. I am not guilty and I am not the man who killed him.

There was not overwhelming evidence in this case. Several of the witness who were in the building with Mr. Pollack who walked in the building before said they saw the perpetrator standing in the lobby but they didn't identify me as the perpetrator. As a matter of fact, the only people who did identify me supposedly came from two people who saw a man fleeing from the scene of

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2 the crime after the gunshots were fired.

3 I am not the man who killed Mr. Abraham
4 Pollack. I am totally innocent of all charges.

5 Thank you.

6 MR. VECCHIONE: Judge, before you conclude,
7 may I just say one thing?

8 THE COURT: Sure.

9 MR. VECCHIONE: Your Honor, obviously,
10 Mr. Posner says everything that the District
11 Attorney's Office wanted to say, except that I
12 personally have to say one thing about
13 Mr. Collins. It is just because of what he said
14 now. He talked about how he walked into a
15 precinct on two occasions, in terms of himself,
16 free and clear of any kind of guilt or any kind of
17 worry that he would be arrested.

18 The point is, Judge, that between the day of
19 this crime and the day that he walked in and was
20 arrested some, about a month later, he and his
21 cohorts had been putting threats out on the
22 street, had been threatening people who were
23 present in that building. It was a closed
24 environment, 126 Graham Avenue. Everybody in that
25 building knew who did this. Everybody in that

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2 building knew that they were to keep their mouths
3 shut because Charlie Glover, who was the person
4 who was the accomplice in this case, lived in that
5 building and continued to live in that building.

6 Mr. Collins was a drug dealer who had
7 operated in and around that building along with
8 Charlie Glover, and everybody we have spoken to,
9 including the people that we have now had to
10 relocate to different parts of this country, knew
11 who did this and were willing to come forward in
12 spite of that because of what the District
13 Attorney's Office promised that we would do for
14 them in terms of relocating and remove the danger
15 that this person presented.

16 So for him to stand before the Court to say
17 that he walked into a precinct because he was
18 innocent is outrageous, Judge. He walked in
19 because he had thought he had taken care of all
20 the witnesses in this case in some shape, manner
21 and form. Witnesses sat in my office shaking
22 because of what had occurred on the street after
23 this homicide.

24 So I need the Court to know and I want the
25 record to be clear that he walked in because he

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2 had thought he had taken care of everybody, Judge,
3 and that's why he felt a measure of comfort.
4 However, it turns out that a jury of twelve people
5 said that he is not innocent and he is, in fact,
6 guilty of this crime.

7 THE COURT: You know, what impressed me most
8 about this case was a little man who was given
9 permission to sleep in the basement of this
10 apartment at 126 Graham and who, on occasion,
11 would mop a floor or sweep a hallway, and he
12 jumped upon an armed robber to try to protect
13 Mr. Pollack. Bravery like that does not exist in
14 our city. He came in here limping from the bullet
15 wound inflicted by the perpetrator. He sustained
16 injuries which he suffers from to this day, little
17 Paul Avery. I think somewhere it says, "Greater
18 love hath no man that he lay down his life for his
19 friend." But he was quite a hero.

20 Now, the sentence of the Court on the murder
21 in the second degree -- and I don't agree with
22 Mr. Posner that I can run some of these
23 consecutively, although I would like to; I would
24 like to be able to sentence this defendant to life
25 without parole because I think that's what it

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mandates and not just life in the correctional facilities that we have in our state but life in a penal institution at hard labor, that's what I think this case deserves -- on murder in the second degree, intentional, 25 to life. Murder in the second degree, felony murder, 25 to life; that is the killing of Mr. Pollack.

The attempted murder of Mr. Avery, eight and a third to 25 to run consecutive to the robbery in the first degree, 12 and a half to 25, to run concurrent with the homicide. Assault one, five to 15. Criminal possession in the second degree, five to 15. Criminal possession in the third degree, two and a third to seven. These sentence to run concurrently but the sentence to the murder in the second degree and the attempted murder in the second degree are to run consecutively.

That's the sentence of the Court.

THE COURT CLERK: You are advised you have a right to appeal from the sentence just imposed upon you by filing a notice of the appeal by with the clerk of this court, in duplicate, within 30 days from this date. A similar notice must be served on the District Attorney of Kings County.

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If you cannot afford to retain counsel for this purpose, you may apply to the Appellate Division, Second Department, at 45 Monroe Place in Brooklyn, and request that counsel be assigned to you for the purpose of prosecuting your appeal.

The sentence of the Court is, under the murder in the second degree, intentional, 25 years to life. Under the second count of murder in the second degree, 25 years to life. Under the attempted murder in the second degree, eight and a third to 25 years, that sentence to run consecutive to the murder counts. Under robbery in the first degree, eight and a third to --

MR. VECCHIONE: 12 and a half.

THE COURT: 12 and a half.

THE COURT CLERK: -- 12 and a half to 25 years. Under assault in the first degree, five to 15 years. Under the criminal possession of a weapon in the second degree, five to 15 years. And under the criminal possession of a weapon in the third degree, two and a third to seven. Each of those sentences to run concurrently.

THE COURT: Do you have a copy of the --

THE COURT CLERK: Judge, as to the VOP.

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2 THE COURT: Yes.

3 Now, this defendant is charged with violation
4 of probation. Based on the conviction in this
5 case, how does he plead, Mr. Harrison?

6 MR. HARRISON: He pleads not guilty.

7 THE COURT: He wants a hearing on it? I am
8 asking you.

9 MR. HARRISON: Yes.

10 THE COURT: Ask him.

11 MR. HARRISON: Yes.

12 (Defendant and counsel conferred.)

13 MR. HARRISON: No, your Honor, he doesn't.

14 THE COURT: How does he plead?

15 MR. HARRISON: Guilty.

16 THE COURT: The sentence of the Court to the
17 attempted robbery in the third degree, he had been
18 given five years probation by Mr. Justice
19 Cirigliano, the sentence is one and a third to
20 four, that sentence to run consecutively to the
21 sentence in this case.

22 MR. VECCHIONE: Thank you, Judge.

23 THE COURT CLERK: As to the mandatory
24 surcharge, Judge?

25 THE COURT: That is imposed.

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THE COURT CLERK: Imposed. And crime victims' assistance fee of \$5?

THE COURT: Imposed, to be taken out of inmate funds.

By the way, the violation of probation consists of the conviction in this case?

MR. VECCHIONE: Yes.

Thank you, Judge.

MR. POSNER: Thank you, Judge.

THE COURT: The defendant is remanded. Probation report to follow.

Mr. Harrison, this motion --

MR. HARRISON: Yes, your Honor.

THE COURT: The motion, Mr. Harrison, that was filed by you on behalf of the defendant, would you bring it to the tenth floor. Have them put a buck sheet on it and tell them what it is and tell them to send it back to me, please.

MR. HARRISON: Yes, your Honor.

Your Honor, off the record.

(Discussion held off the record at the bench.)

MR. VECCHIONE: Judge, are you done with us?

THE COURT: Yes.

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MR. VECCHIONE: Thank you Judge.

* * * * *

It is hereby certified that the foregoing is a true and accurate transcript of the proceedings.

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DONNA MANNING, RPR
OFFICIAL COURT REPORTER
SUPREME COURT-KINGS COUNTY